

REGULAR CITY COUNCIL MEETING
October 28, 1996

*These minutes
were amended &
approved by Council
at SCCM 12-16-96.
See Amended Minutes
following this set of
minutes. +J*

PRESENT

Don Dafoe
Gayle Bunker
Robert Dekker
Robert Droubay
Dale Roper
Glen Swalberg

Mayor
Council Member
Council Member
Council Member
Council Member
Council Member

ABSENT

None

OTHERS PRESENT

Dorothy Jeffery
Richard Waddingham
Neil Forster
Judy Baker
Greg Schafer
Darin Phelps
Jackie Nielson
Robert Hunter
Lisa Riley Roche
Sherry Nickle
Laura Dent
Several Scouts & Leaders

City Recorder
City Attorney
Public Works Director
Treasurer
City Employee
Chronicle/Progress
City Resident
Salt Lake Olympic Organizing Committee
Deseret News
Delta High School Teacher
Delta High School Student
City Residents

Mayor Dafoe called the meeting to order at 7:00 p.m. Dorothy Jeffery, City Recorder, acted as secretary. Mayor Dafoe stated that notice of the meeting time, place, and agenda was posted at the principal office of the governing body located at 76 North 200 West and was provided to the Millard County Chronicle/Progress, the local radio station, and to each member of the City Council by personal delivery two days prior to the meeting.

Council Member Glen Swalberg offered an invocation, after which Mayor Dafoe led the Council in the Pledge of Allegiance.

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Mayor Dafoe stated that Mr. Nixon and Mr. Peterson were caught in a snow storm near Nephi this evening and had returned to Salt Lake. They will be unable to present the audit at this time and requested that they be put on the agenda for a later Council meeting. Council Member Robert Droubay MOVED to table the audit report until a later date. The motion was SECONDED by Council Member Dale Roper. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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The Council asked if the Committee is looking for a community idea. Mr. Hunter stated that they are seeking ideas from individuals. Obviously the image will need to be a very broad theme. After the image is determined, the logo will be developed, followed by the mascot. Mayor Dafoe offered the support of the City based on the fact that we are a part of the State of Utah and do support the Olympics and what they mean to the State, although we probably do not have a lot that we can contribute and probably not a lot to gain from the Olympics being in Salt Lake other than the possibility of some through traffic.

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Jackie Nielson told the Council that the program she is presenting is a recreation program for children with disabilities. The program has operated for three summers now; for two summers, the mothers put together the activities out of their own pockets, then they were able to obtain a \$7,000 grant from the Governor's Council for People with Disabilities for last summer. They have been advised that there is a maximum of three years allowed for the grant and have been approved for next summer. After the grants expire, the program will need to be funded through the community. They have appeared before the County Commission to request their assistance. They are currently in the process of being incorporated so that they can solicit contributions from businesses and individuals. Mrs. Nielson showed a video to the Council of activities the children participated in during the past summer.

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Ms. Dent stated that the FHA program at Delta High School would like to observe "Celebrate Families Day" during National family week, the week of Thanksgiving, which would be in conjunction with the Delta City holiday festivities. The program is designed to remind everyone that their family should be their first priority. Ms. Dent requested that the City Council approve the signing of a Proclamation proclaiming November 30th as "Celebrate Families Day" in Delta. It was suggested that this program be done in conjunction with the Festival of the Trees on the afternoon of November 30th at the Fair Building. Mayor Dafoe felt that this program is a worthwhile endeavor and any efforts to strengthen the program should be endorsed.

Following discussion, Council Member Robert Droubay MOVED that the City Council proclaim November 30, 1996 as "Delta City Celebrate Families Day" as part of National Family Week and authorize Mayor Dafoe to sign a proclamation to that effect. The motion was SECONDED by Council Member Dale Roper. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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Following discussion, Council Member Robert Dekker MOVED to table this matter until the plat has been received. The motion was SECONDED by Council Member Dale Roper. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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City Attorney Richard Waddingham advised the Council that the Ordinance has been prepared and the Petition has been prepared for signatures. In attempting to obtain the signatures on the Petition, Attorney Waddingham was advised that the L.D.S. Church does not want to sign the Petition at this time. The Church will go through their approval process and advise us when they are ready to go forward with the matter.

Following discussion, Council Member Glen Swalberg MOVED to table this matter until the L.D.S. Church is ready to go forward with it. The motion was SECONDED by Council Member Robert Dekker. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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upon by the Planning Commission and the units had been constructed, there would be no problem with preparing the declarations.

Attorney Waddingham began preparation of the declarations and, as he was checking the legal details under the Condominium Act, the question came up as to whether or not separate ownership of a condominium unit, under the statute, is deemed real property. This raised the question as to whether or not this really requires a subdivision. Mr. Waddingham checked with Mr. Nielson and later learned that it was not necessary to subdivide, however, in checking further, he found that it qualifies as a "planned unit development" under our ordinance. A planned unit development requires approval by the Planning Commission, that a public hearing be set, and that the City Council approve it.

Now that the units have been constructed, the Council is in an awkward situation. Fortunately, Zoning Officer Neil Forster has gone through all the requirements to determine whether it will pass under our ordinances and get a development permit. The development permit is the critical portion of the process and, fortunately, the project passed the requirements for a development permit. When this came up, Attorney Waddingham and Zoning Officer Forster determined that the safe course of action would be to bring the item back to the Planning Commission for their approval and recommendation to the City Council to set a public hearing and approve the project.

At the point where the project went back to the Planning Commission, Attorney Waddingham had a conflict of interest. The conflict of interest was unintentional, but it does exist. Mr. Waddingham has contacted the Nielsons and advised them of the conflict of interest and that, under the Rules of Ethics, the only way he can continue to represent them is if he obtains a signed waiver from both the Nielsons and the City Council. In reality, there is no other alternative. The Declarations for the condominiums were 90% completed when he realized that the project would need to come back before the Council. At that point, Attorney Waddingham requested that he be put on the City Council Agenda to advise the Council of the conflict of interest. Attorney Waddingham does not believe the conflict to be detrimental in the sense that the units have been completed; nevertheless, if, in the future, Mr. Nielson decides to build additional condominiums, Attorney Waddingham would definitely not want to represent the Nielsons in further matters.

Mayor Dafoe questioned whether Attorney Waddingham had performed any work on the condominium project other than preparing the protective covenants and was advised that this is the only item Attorney Waddingham has participated in. The declarations, conditions, etc. which were prepared are unique to the persons owning the units; it is not a City issue in and of itself, but the fact that it calls for a vote from this Council creates conflict which Attorney Waddingham needs to advise the Council of. If the Council feels that, based on what has happened, where everything has progressed to this stage, that Attorney Waddingham can go ahead and complete the protective covenants for the Nielsons, he would need a waiver signed by both the Council and the Nielsons. Attorney Waddingham does not perceive any problem with what has been done given the fact that the units have already been built. Mayor Dafoe noted that the City has no jurisdiction over the protective covenants. Attorney Waddingham advised Mayor Dafoe that the only reason he brought it up was the fact that he found himself in the position of having to give the Planning Commission legal advice at a point where he represented the Nielsons.

Mayor Dafoe questioned whether the covenants now drafted would apply to any future construction. Attorney Waddingham stated that, if other units were constructed, he would not feel that he could advise the Nielsons further. This matter pertains to the four units which have already been constructed. The Planning Commission did approve, as a planned unit development, those four units as they now stand. If additional units are proposed, the Nielsons will be required to come back before the Planning Commission.

Attorney Waddingham advised the Council that they have the right to tell him that he cannot continue to represent the Nielsons and, in addition, that he does not see any adverse impact coming from what has been done, but, if the Council agrees to his continuing the protective covenants for the Nielsons, Attorney Waddingham requests that the Waiver be signed.

Following discussion, Council Member Gayle Bunker MOVED to approve a Waiver of Potential Conflict of Interest for Attorney Waddingham and instruct the Mayor to sign said Waiver. The motion was SECONDED by Council Member Glen Swalberg. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

OTHER BUSINESS

Mayor Dafoe advised everyone that the City Christmas Party has been scheduled for Friday, December 13, 1996 at the Jade Garden.

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Council Member Glen Swalberg advised the Council that the Great Basin Museum entered in to a grant arrangement with Delta City wherein the City appropriated \$2,200.25 to assist the Museum in purchasing a computer. The Museum was then to participate with the state grant people in order to qualify for the State's Heritage Museum Program. Due to illness the Museum people were unable to complete the number of hours required to receive full funding for the computer. They have received a check from the State of Utah for \$1,511.00, leaving a balance due the City of \$689.25. Council Member Swalberg asked the Council if there would be any part of the balance that the City would write off, inasmuch as their budget will not allow payment of the remaining amount. Mayor Dafoe recommended that the balance be given as a contribution to the Great Basin Museum. Council Member Dale Roper MOVED to contribute the unpaid balance of \$689.25 to the Great Basin Museum. The motion was SECONDED by Council Member Gayle Bunker. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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Council Member Robert Droubay asked how the beautification committee has progressed. Council Member Glen Swalberg reported that the committee has done their survey and several townspeople have voluntarily submitted information on properties which they believe should be

cleaned up. There was a total of approximately twenty-one properties which were suggested and those have been reduced to fourteen or fifteen. Of that number, about half have been voluntarily cleaned up without any contact from anyone involved in the beautification effort. Council Member Swalberg requested permission from the Council to call some of the property owners on a suggestive basis to see if they would voluntarily clean up the property without letters and official action. The Council agreed that the calls would be a good idea and leave the letters as a last resort. Mayor Dafoe expressed concern that we currently have only a spring clean up effort and perhaps it would be desirable to also have a fall clean up effort. The City crew could be sent out to pickup piles of leaves, limbs, etc. Public Works Director Neil Forster responded that he has been cooperating with residents to pickup debris throughout the summer, time permitting. The Council agreed that this should continue, as time permits.

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Council Member Robert Droubay asked about the responsibility of Delta City with respect to sidewalks. Mayor Dafoe responded that, from the research done by Attorney Waddingham, the law states that the City is responsible for repair and upkeep of sidewalks. Several Council Members mentioned the need for improvement to the sidewalk in front of Van's Motors.

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Council Member Dale Roper reported that the bids for the addition to the Fire Station will be opened on Tuesday, October 29, 1996 at 7:00 p.m. at the Fire Station. The new building will be a frame building and will have a brick exterior which will match the City Building. There will also be a brick veneer put on the other building, at a future date, so they will all look the same. It is expected that the bids will come in over what is budgeted.

Mayor Dafoe asked if there were any comments, questions, or items to be discussed. There being none, Council Member Robert Dekker MOVED to adjourn. The motion was SECONDED by Council Member Dale Roper. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously. Mayor Dafoe declared the meeting adjourned at 8:45 p.m.


DON DAFOE, Mayor


DOROTHY JEFFERY, City Recorder

MINUTES APPROVED: RCCM 11-25-96

AMENDED MINUTES
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Zoning Officer Neil Forster has gone through all the requirements to determine whether the condominium project will pass under our ordinances and get a development permit. The development permit is the critical portion of the process and, fortunately, the project passed the requirements for a development permit. When this came up, Attorney Waddingham and Zoning Officer Forster determined that the safe course of action would be to bring the item back to the Planning Commission for their approval and recommendation to the City Council to set a public hearing and approve the project.

At the point where the project went back to the Planning Commission, Attorney Waddingham had a potential conflict of interest. Mr. Waddingham has contacted the Nielsons and advised them of the conflict of interest and that, under the Rules of Ethics, the only way he can continue to represent them is if he obtains a signed waiver from both the Nielsons and the City Council. The Declarations for the condominiums were 90% completed when he realized that the project would need to come back before the Council. At that point, Attorney Waddingham requested that he be put on the City Council Agenda to advise the Council of the potential conflict of interest. Attorney Waddingham does not believe the conflict to be detrimental in the sense that the units have been completed.

Mayor Dafoe questioned whether Attorney Waddingham had performed any work on the condominium project other than preparing the Declaration of Covenants and was advised that this is the only item Attorney Waddingham has participated in. The Declaration of Covenants, conditions, and restrictions which were prepared are unique to the persons owning the units; it is not a City issue in and of itself, but the fact that it calls for a vote from this Council to grant approval creates possible conflict. If the Council feels that, based on what has happened, where everything has progressed to this stage, Attorney Waddingham can go ahead and complete the Declaration of Covenants for the Nielsons, he would need a waiver signed by both the Council and the Nielsons. Attorney Waddingham does not perceive any problem with what has been done given the fact that the units have already been built. Mayor Dafoe noted that the City has no jurisdiction over the protective covenants. Attorney Waddingham advised Mayor Dafoe that the only reason he brought it up was the fact that he found himself in the position of having to give the Planning Commission legal advice at a point where he represented the Nielsons.

Mayor Dafoe questioned whether the covenants now drafted would apply to any future construction. This matter pertains to the four units which have already been constructed. The Planning Commission did approve, as a planned unit development, those four units as they now stand. If additional units are proposed, the Nielsons will be required to come back before the Planning Commission.

Attorney Waddingham advised the Council that they have the right to tell him that he cannot continue to represent the Nielsons and, in addition, that he does not see any adverse impact coming from what has been done. However, if the Council agrees to his continuing representation of the Nielsons, Attorney Waddingham requests that the Waiver be signed.

Following discussion, Council Member Gayle Bunker MOVED to approve a Waiver of Potential Conflict of Interest for Attorney Waddingham and instruct the Mayor to sign the Waiver. The motion was SECONDED by Council Member Glen Swalberg. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

OTHER BUSINESS

Mayor Dafoe advised everyone that the City Christmas Party has been scheduled for Friday, December 13, 1996 at the Jade Garden.

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Council Member Glen Swalberg advised the Council that the Great Basin Museum entered in to an arrangement with Delta City wherein the City appropriated \$2,200.25 to assist the Museum in purchasing a computer. The Museum was then to participate with the state grant people in order to qualify for the State's Heritage Museum Program. Due to illness the Museum people were unable to complete the number of hours required to receive full funding for the computer. They have received a check from the State of Utah for \$1,511.00, leaving a balance due the City of \$689.25. Council Member Swalberg asked the Council if there would be any part of the balance that the City would write off, inasmuch as their budget will not allow payment of the remaining amount. Mayor Dafoe recommended that the balance be given as a contribution to the Great Basin Museum. Council Member Dale Roper MOVED to contribute the unpaid balance of \$689.25 to the Great Basin Museum. The motion was SECONDED by Council Member Gayle Bunker. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously.

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Council Member Robert Droubay asked how the beautification committee has progressed. Council Member Glen Swalberg reported that the committee has done their survey and several townspeople have voluntarily submitted information on properties which they believe should be cleaned up. There was a total of approximately twenty-one properties which were suggested and those have been reduced to fourteen or fifteen. Of that number, about half have been voluntarily

cleaned up without any contact from anyone involved in the beautification effort. Council Member Swalberg requested permission from the Council to call some of the property owners on a suggestive basis to see if they would voluntarily clean up the property without letters and official action. The Council agreed that the calls would be a good idea and leave the letters as a last resort. Mayor Dafoe expressed concern that we currently have only a spring clean up effort and perhaps it would be desirable to also have a fall clean up effort. The City crew could be sent out to pickup piles of leaves, limbs, etc. Public Works Director Neil Forster responded that he has been cooperating with residents to pickup debris throughout the summer, time permitting. The Council agreed that this should continue, as time permits.

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Council Member Robert Droubay asked about the responsibility of Delta City with respect to sidewalks. Mayor Dafoe responded that, from the research done by Attorney Waddingham, the law states that the City is responsible for repair and upkeep of sidewalks. Several Council Members mentioned the need for improvement to the sidewalk in front of Van's Motors.

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Council Member Dale Roper reported that the bids for the addition to the Fire Station will be opened on Tuesday, October 29, 1996 at 7:00 p.m. at the Fire Station. The new building will be a frame building and will have a brick exterior which will match the City Building. There will also be a brick veneer put on the other building, at a future date, so they will all look the same. It is expected that the bids will come in over what is budgeted.

Mayor Dafoe asked if there were any comments, questions, or items to be discussed. There being none, Council Member Robert Dekker MOVED to adjourn. The motion was SECONDED by Council Member Dale Roper. Mayor Dafoe asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed unanimously. Mayor Dafoe declared the meeting adjourned at 8:45 p.m.


DON DAFOE, Mayor


DOROTHY JEFFERY, City Recorder

AMENDED MINUTES APPROVED: SCCM 12-16-96